

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
April 21, 2015

v

CHRISTOPHER LAMONT WALLACE,

Defendant-Appellant.

No. 321096
Muskegon Circuit Court
LC No. 11-61233-FC

Before: METER, P.J., and SAWYER and BOONSTRA, JJ.

PER CURIAM.

Defendant appeals by right his conviction, following a jury trial, of premeditated first-degree murder, MCL 750.316(a). Defendant was sentenced as a habitual fourth offender, MCL 769.12, to life imprisonment without parole on March 18, 2014. We affirm.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

The victim, Jennifer Phillips, was found dead in her apartment on October 21, 2011. Her boyfriend contacted the Muskegon Police Department because she had not responded to his or her family's calls or texts or answered her apartment door since approximately 3:30 p.m. the day before. Police arrived between 10:30-11:00 p.m. on October 21, 2011. Upon entering the apartment, the police encountered defendant lying face down on the floor surrounded by white garbage bags. While conscious, defendant did not respond to questions from police. In defendant's pockets, officers found, among other things, a necklace belonging to Phillips, a key to Phillips's apartment, Phillips's unemployment card, and a used condom. The bags contained a plethora of items including, a table stand lamp with the cord looped at the end, towels, a cloth with reddish stains, a washcloth, female clothes, and an empty vegetable oil container among other items. The Michigan State Police forensic unit matched DNA found on the lamp cord to Phillips's DNA. The condom contained both non-sperm and sperm DNA. The non-sperm DNA matched Phillips, and the sperm DNA matched defendant.

In the bathroom, police found Phillips nude, face-down in the bathtub. She exhibited no signs of life, and abrasions and bruises were found on her body, including eighth-of-an-inch linear marks on her neck. A forensic pathologist testified at trial that Phillips had probably been deceased and lying face-down for more than 12 hours. The autopsy determined that strangulation by another person was the cause of death.

At trial, Sherine Thomas testified against defendant. On February 21, 2005, Thomas had allowed defendant, an acquaintance, into her home, where defendant sexually assaulted her. Afterwards, defendant tied her up and performed routine activities such as preparing food, watching television, and sleeping in her apartment. After hours of captivity, Thomas escaped. A rape kit was performed on Thomas and later, DNA from the rape kit was matched to defendant. Subsequently, defendant was convicted of sexual assault.

Before trial, the trial court ruled that Thomas's testimony was admissible under MRE 404(b). It found that defendant's prior sexual assault evidenced a common plan or scheme or opportunity to commit the offense.

A few months before the murder, defendant and Phillips had lived in the same boarding house. Conray Luke, an acquaintance of defendant, testified that defendant had told him about a white woman he liked that lived in his building. Luke recalled that defendant talked about going to her apartment and "whooping her butt" because she was seeing another man. Additionally, defendant's parole agent, Shane Johnson, testified that between August 29 and 31, 2011, defendant had lived in the same building as Phillips. However, as a result of defendant's failed drug test, Johnson arrested him on August 31, 2011. Defendant was in jail for 35 days. Finally, Johnson stated that defendant absconded from parole by dumping his GPS tracking device within a quarter mile of Phillips's apartment at 5:57 p.m. on October 20, 2011.

After Johnson's testimony, defendant moved for a mistrial, claiming that the admission of defendant's prior parole status and arrest was highly prejudicial, and thus inadmissible. The trial court denied the motion and admitted the testimony as *res gestae* evidence. It explained that Johnson's testimony placed defendant near Phillips's apartment at the time the offense occurred. Thus, the testimony's probative value was not outweighed by any prejudicial effect.

Defendant contended that someone else murdered Phillips. Nevertheless, the jury convicted defendant. This appeal followed.

II. OTHER ACTS

Defendant argues that the trial court abused its discretion in admitting Johnson's and Thomas's testimony, as it was unfairly prejudicial and failed to satisfy the relevancy requirements under MRE 404(b). Thus, defendant contends he is entitled to a new trial. We disagree and analyze each witness's testimony separately.

The admissibility of other acts evidence is within the trial court's discretion and will be reversed on appeal only when there has been a clear abuse of discretion. *People v Crawford*, 458 Mich 376, 383; 582 NW2d 785 (1998); *People v Waclawski*, 286 Mich App 634, 670; 780 NW2d 321 (2009). A court abuses its discretion when it chooses an outcome that is outside the range of reasonable and principled outcomes. *People v Orr*, 275 Mich App 587, 588-89; 739 NW2d 385 (2007).

To be admissible under MRE 404(b), generally, other acts evidence: (1) must be offered for a proper purpose, (2) must be relevant, and (3) must not have a probative value substantially outweighed by its potential for unfair prejudice. *People v Knox*, 469 Mich 502, 509; 674 NW2d 366 (2004); *People v Steele*, 283 Mich App 472, 479; 769 NW2d 256 (2009). A proper purpose

is one other than establishing the defendant's character to show his propensity to commit the offense. *People v VanderVliet*, 444 Mich 52, 74; 508 NW2d 114 (1993), mod 445 Mich 1205 (1994); *People v Johnigan*, 265 Mich App 463, 465; 696 NW2d 724 (2005). MRE 404(b) allows the admission of other acts evidence if it is offered to show a common "scheme, plan, or system in doing an act." Evidence of misconduct similar to that charged is logically relevant to show that the charged act occurred if the uncharged misconduct and the charged offense were sufficiently similar to support an inference that they were manifestations of a common plan, scheme, or system. *People v Dobek*, 274 Mich App 58, 86; 732 NW2d 546 (2007). The trial court, upon request, may provide a limiting instruction under MRE 105. *Knox*, 469 Mich at 509.

MRE 404(b)'s third prong mirrors the balancing test in MRE 403: that relevant evidence may still be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. "Unfair prejudice" does not mean "damaging." *People v Mills*, 450 Mich 61, 75; 537 NW2d 909, mod 450 Mich 1212 (1995), quoting *Sclafani v Peter S Cusimano, Inc*, 130 Mich App 728, 735; 344 NW2d 347 (1983); *People v Schaw*, 288 Mich App 231, 237; 791 NW2d 743 (2010). Rather, the proffered evidence would be unfairly prejudicial if it presents a danger that marginally probative evidence will be given undue or preemptive weight by the jury. *Elezovic v Ford Motor Co*, 259 Mich App 187, 207; 673 NW2d 776 (2003), aff'd in part and rev'd in part on other grounds, 472 Mich 408 (2005).

Evidentiary error does not require reversal unless it affirmatively appears that it is more probable than not that the error was outcome determinative. *People v Knapp*, 244 Mich App 361, 378; 624 NW2d 227 (2001). A defendant bears the burden of establishing that, more probably than not, a miscarriage of justice occurred. *Id.*

A. PRIOR CRIMINAL SEXUAL CONDUCT

The trial court did not abuse its discretion in admitting Thomas's testimony under MRE 404(b). The prosecution offered the testimony for a proper purpose—namely, to show defendant's common scheme or plan in committing sexual assault, as evidenced by his sexual assault of both Thomas and Phillips. Defendant was charged with open murder, which includes felony murder (although defendant was ultimately convicted of premeditated murder). In order to prove felony murder, the prosecution bore the burden of establishing the underlying criminal sexual conduct. So, defendant's other act becomes highly relevant if the prosecution could establish similarities between both sexual assaults. "Evidence is admissible if helpful in throwing light upon any material point in issue." *People v Murphy (On Remand)*, 282 Mich App 571, 580; 766 NW2d 303 (2009), quoting *People v McKinney*, 410 Mich 413, 419; 301 NW2d 824 (1981).

In this case, the prosecution demonstrated three logical similarities between the two incidents: defendant physically and sexually assaulted both women; defendant was acquainted with both women and entered their homes without signs of forced entry; and defendant stayed in their apartments for long periods of time after the assault. Thus, these two incidents were sufficiently similar to support an inference that they were manifestations of a common plan, scheme, or system.

Moreover, the prejudice resulting from the prior sexual assault did not substantially outweigh its probative value under MRE 403. Once again, “unfair prejudice” must be unfair, rather than merely damaging. *Elezovic*, 259 Mich App at 207. Here, while Thomas’s testimony may have been prejudicial, the logical connection between the two instances is highly probative. The testimony becomes especially relevant when one considers defendant’s insinuations that someone else had murdered Phillips and that defendant was a mere bystander. The similarities undermine this contention.

Finally, the trial court specifically instructed the jury pursuant to MRE 105 not to convict the defendant for past conduct or because he is a “bad person.” “It is well established that jurors are presumed to follow their instructions.” *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998). We therefore find no error in the trial court’s admission of this evidence.

B. PAROLE STATUS, PRIOR ARREST, AND PAROLE ABSCONDING

The trial court admitted Johnson’s testimony regarding defendant’s parole status, failed drug test and subsequent arrest, and parole absconding as *res gestae* evidence. Defendant contends that this evidence was inadmissible under MRE 402 and 404b.

Res gestae evidence, or evidence of related events, “is admissible when [the acts are] so blended or connected with the crime of which defendant is accused that proof of one incidentally involves the other or explains the circumstances of the crime.” *People v Sholl*, 453 Mich 730, 742; 556 NW2d 851 (1996), quoting *People v Delgado*, 404 Mich 76, 83; 273 NW2d 395 (1978). *Res gestae* are the facts that so illustrate and characterize the principal fact as to constitute the whole of one transaction. *People v Robinson*, 128 Mich App 338, 340; 340 NW2d 303, 304 (1983). “It is the nature of things that an event does not occur singly and independently, isolated from all others, but, instead, is connected with some antecedent event from which the fact or event in question follows as an effect from a cause.” *Sholl*, 453 Mich at 742, quoting *Delgado*, 404 Mich at 83. Thus, courts admit evidence of other criminal acts when it helps to explain the circumstances of the crime at issue. *People v Malone*, 287 Mich App 648, 662; 792 NW2d 7, 16-17 (2010).

Regarding defendant’s parole status and absconding specifically, the trial court did not err in admitting this information because the prosecution offered it for a proper purpose concerning defendant’s opportunity and intent. The prosecution offered the evidence of defendant’s parole status to establish that defendant and Phillips were acquaintances who lived in the same building for a time. The prosecution offered the evidence of defendant’s parole absconding to show that defendant had absconded on October 20, 2011—the same time Phillips became unresponsive to communication—and that he left his tracking device near Phillips’s home. The prosecution thus placed the fact of defendant’s absconding in close proximity, in both location and time, to Phillips’s death. While prejudicial, this evidence gave the jury a better understanding of the events and circumstances leading up to the murder. *Sholl*, 453 Mich at 742. The court did not err in admitting this evidence.

However, trial court abused its discretion by admitting evidence of defendant’s prior arrest for failing a drug test while on parole, as these facts are not relevant under MRE 402 and are highly prejudicial under MRE 403. Defendant’s parole status as of August 2011 is only

relevant to show that defendant and Phillips lived near each other. The reason that defendant moved away—his subsequent arrest for failing the drug test—is not relevant. Moreover, the 35 days that defendant spent in jail is highly prejudicial and offered little probative value. While the jury is entitled to hear “the complete story,” these extraneous (and prejudicial) details failed to add any relevant facts to the prosecution’s narrative. See *People v Benton*, 294 Mich App 191, 199; 817 NW2d 599 (2011). Thus, the trial court erred in admitting evidence of defendant’s failed drug test and subsequent arrest.

Nevertheless, although the admission of this evidence constituted error, the error was harmless. Under MCL 769.26, an error is not grounds for reversal unless, after an examination of the entire cause, it affirmatively appears that it is more probable than not that the error was outcome determinative. *People v Williams*, 483 Mich 226, 243; 769 NW2d 605 (2009). The error is presumed to be harmless and the defendant bears the burden of showing that the error resulted in a miscarriage of justice. *People v Hawthorne*, 474 Mich 174, 181; 713 NW2d 724 (2006). An error need not be harmless beyond a reasonable doubt. *People v Mateo*, 453 Mich 203, 216; 551 NW2d 891 (1996). Rather, error justifies reversal if it is more probable than not that it affected the outcome. *People v Young*, 472 Mich 130, 141-142; 693 NW2d 801 (2005); *People v Lukity*, 460 Mich 484, 495-496; 596 NW2d 607 (1999). An error determined the outcome if it undermined the reliability of the verdict. *People v Feezel*, 486 Mich 184, 192; 783 NW2d 67 (2010).

In this case, the trial court’s error was not outcome determinative, because even without Johnson’s testimony the prosecution still put forth sufficient evidence to convict defendant. In fact, the evidence against defendant is considerable. Police found defendant in Phillips’s home where Phillips was found dead in the bathtub. Both defendant’s and Phillips’s DNA were found on a used condom in defendant’s pocket. Police found Phillips’s belongings in bags surrounding defendant. Phillips died of strangulation, and police found a lamp cord—on which was found Phillips’s DNA—near defendant, in one of the bags. Luke testified that defendant was angry with a white woman who lived near him, because he believed that she was seeing another man, and talked about “whooping her butt.” Defendant absconded from parole at the same time Phillips became unresponsive to calls and texts. Defendant had committed a similar sexual assault previously. Moreover, as noted above, any harm to defendant was cured when the trial court specifically instructed the jury pursuant to MRE 105 not to convict defendant for past conduct or because he is a “bad person.” In sum, the defendant failed to prove the error resulted in a “miscarriage of justice.” *Hawthorne*, 474 Mich at 181.

Affirmed.

/s/ Patrick M. Meter
/s/ David H. Sawyer
/s/ Mark T. Boonstra